

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 35455 of 2004(U)

AGAINST THE ORDER DATED 2.7.04 IN IA 4598/1994. IN
AS.52/1991 of I ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

SAVITHRI PRABHA, KAPPITHOPPU VEEDU,
BALARAMAPURAM, ANTHIYOOR DESOM,
KOTTUKAL PAKUTHY.

BY ADV. SRI.J.HARIKUMAR
SRI.HARIKUMAR.S.

RESPONDENT:

VASUDEVAN SIVAKUMAR, AGENT OF MBT PARCEL
SERVICE, KAPPITHOPPU VEEDU, BALARAMAPURAM,
ANTHIYOOR DESOM, KOTTUKAL PAKUTHY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.35455/2004

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF AFFIDAVIT AND PETITION I.A.4598/94 DT.24.9.94.

EXT.P2 – TRUE COPY OF MEDICAL CERTIFICATE DT.23.9.04 ISSUED BY
DR.K.BHARGAVAN.

EXT.P3 – TRUE COPY OF ORDER DT.2.7.04 IN I.A.4598/94 IN A.S.52/91 OF I ADDL.
SUB COURT, THIRUVANANTHAPURAM.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.35455 OF 2004
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DATED THIS THE 12TH JUNE, 2007

J U D G M E N T

Service is complete. But there is no appearance for the respondent.

2. In this Writ Petition under Article 227 of the Constitution, the petitioner who was the plaintiff in a suit for redemption and appellant before the lower appellate court impugns Ext.P3 order. By Ext.P3 order, the learned Subordinate Judge dismissed the application for condonation of delay caused in the matter of filing the application for restoration of an application to restore the appeal which had been dismissed for default. The learned Subordinate Judge has found in Ext.P3 that the petitioner was not at all vigilant in the matter of prosecuting the litigation. I must also agree that the learned Judge was justified, to a considerable extent, in arriving at such a finding. But it is seen that the learned Judge did not notice the original of Ext.P2 medical certificate which had been produced by the petitioner along with Ext.P1 application. May be, the petitioner was not serious in putting the medical certificate in evidence by adducing oral evidence. But, at the same time, the fact remains that a medical certificate (Ext.P2) had been produced by the petitioner along with

Ext.P1. The policy of law is to have all causes adjudicated on their merits. In view of that policy and taking note of the circumstance that there is no resistance by the respondent before this Court to the prayers in this Writ Petition, I am inclined to set aside Ext.P3 on terms:

Ext.P3 will stand set aside and the delay caused by the petitioner in the matter of filing the application to restore I.A.No.5895 of 1992 will stand condoned on condition that the petitioner pays a sum of Rs.1500/- to the respondent either directly or through the respondent's advocate appearing in the court below, within three weeks from today and pays a further sum of Rs.500/- to the High Court Legal Services Committee within the aforesaid period.

If the payments are not made within the stipulated time, Ext.P3 will stand confirmed and the Writ Petition will stand dismissed. It is made clear that I have not stated anything touching the merits of the restoration application.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl

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